Supreme Court, U.S.
FILED
SEP 24 2001
OFFICE OF THE CLERK

No. 01-270

IN THE

Supreme Court of the United States

YELLOW FREIGHT SYSTEM, INC.,
Petitioner,

v.

STATE OF MICHIGAN, MICHIGAN DEPARTMENT OF TREASURY AND ITS STATE TREASURER, MICHIGAN DEPARTMENT OF COMMERCE AND ITS DIRECTOR AND MICHIGAN PUBLIC SERVICE COMMISSION AND ITS COMMISSIONERS, JOHN G. STRAND, RONALD E. RUSSELL, AND JOHN L. O'DONNELL,
Respondents.

On Petition for a Writ of Certiorari to the Michigan Supreme Court

REPLY BRIEF FOR PETITIONER

JOHN W. BRYANT *
R. IAN HUNTER
NEILL T. RIDDELL
DEAN & FULKERSON
801 W. Big Beaver Road
Fifth Floor
Troy, MI 48084-4767
(248) 362-1300

* Counsel of Record

Counsel for Petitioner

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

RULE 29.6 STATEMENT

Petitioner Yellow Freight System, Inc. is a wholly owned subsidiary of Yellow Corporation, a publicly held company.

TABLE OF CONTENTS

	Page
RULE 29.6 STATEMENT	i
TABLE OF AUTHORITIES	iv
REPLY BRIEF FOR PETITIONER	1
CONCLUSION	6

TABLE OF AUTHORITIES

CASES	Page
American Trucking Associations—Petition for Declaratory Order—Single State Insurance Registration, 9 ICC 2d 1184 (1993)	5, 6
Chevron USA, Inc. v Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)	6
National Association of Regulatory Utility Commissioners v ICC, 41 F3d 721, 309 U.S. App. D.C. 325 (D.C. Cir. 1994)	1
Schneider National Carriers, Inc. v Michigan, No. 208346 (Mich. Ct. App. May 14, 1999)	4
Single State Insurance Registration, 9 ICC 2d 610 (1993)	1
Western Airlines, Inc. v Board of Equalization, 480 U.S. 123 (1987)	4
STATUTES	
49 U.S.C. §11504(c)(2)(B)(iv)(III)	3

IN THE

Supreme Court of the United States

No. 01-270

YELLOW FREIGHT SYSTEM, INC.,
Petitioner,

v.

STATE OF MICHIGAN, MICHIGAN DEPARTMENT OF TREASURY AND ITS STATE TREASURER, MICHIGAN DEPARTMENT OF COMMERCE AND ITS DIRECTOR AND MICHIGAN PUBLIC SERVICE COMMISSION AND ITS COMMISSIONERS, JOHN G. STRAND, RONALD E. RUSSELL, AND JOHN L. O'DONNELL,
Respondents.

On Petition for a Writ of Certiorari to the Michigan Supreme Court

REPLY BRIEF FOR PETITIONER

The opposition of Respondents State of Michigan, *et al.* virtually concedes that the Michigan Supreme Court's opinion below is in error and offers no reason why this court should not resolve the clear conflict between this erroneous opinion and the contrary opinions of the D.C. Circuit [1] and the Interstate Commerce Commission.[2] Where the State of Michigan itself cannot defend the reasoning of its own supreme court, there can be little doubt that this Court should act immediately to eliminate the disruption to federal transportation law which this conflicting state supreme court decision has created.

---

[1] *National Association of Regulatory Utility Commissioners v ICC*, 41 F3d 721, 309 U.S. App. D.C. 325 (D.C. Cir. 1994)

[2] *Single State Insurance Registration*, 9 ICC 2d 610 (1993)

The need for certiorari is not negated by the suggestion which occupies almost the entirety of Respondents' opposition that an alternative argument not even mentioned in the Michigan Supreme Court opinion could justify the result of that opinion. Setting aside the substantive deficiencies of this nonmentioned argument, the issue for this Court on certiorari is whether the Michigan Supreme Court opinion expressly challenging the contrary opinions of the D.C. Circuit and the ICC creates an important conflict in the interpretation of federal law which this court should resolve. Respondents' opposition confirms the need for certiorari by highlighting the presence of similar legal circumstances and past legal challenges involving states other than Michigan (Opp. 3, 16, 20b-21b) and recognizing that the Michigan Supreme Court itself stated its explicit disagreement with the prior decisional law created by the D.C. Circuit and the ICC. (Opp. 7).

The argument to which virtually the entirety of Respondents' opposition is dedicated is a claim that Michigan could be found to have been collecting or charging a $10 fee for Illinois plated vehicles on November 15, 1991 within the meaning of the SSRS statute because it had announced prior to that date that it intended to impose such a fee beginning February 1, 1992 [3] Respondents recognize that although the Michigan Supreme Court opinion "noted this fact, it did not figure in its disposition of the case." (Opp. 9). They argue

[3] Michigan made this change by altering its "methodology for determining reciprocity". Opp. 11. The specific alteration involved applying reciprocity exemptions based on the state in which the motor carrier maintained its principal place of business rather than the state in which the vehicles themselves were commercially plated. This change had the effect of eliminating reciprocity fee exemptions for all vehicles commercially plated in fee-exempt states if the owners of such vehicles maintained their principal places of business in non fee-exempt states. The fee for such vehicles was zero for operations on November 15, 1991, but increased to $10 beginning in February 1992.

nevertheless that the Michigan Supreme Court "reached the proper result in this case for reasons other than stated in its opinion." (Opp. 1).

Nowhere in their opposition do Respondents offer any argument as to why the presence of an alternative argument not adopted or even discussed by the Michigan Supreme Court serves to eliminate the clearly stated conflict between that court's opinion and the opinion of the D.C. Circuit. Indeed, the Michigan Supreme Court opinion specifically stated that it did not agree with the D.C. Circuit opinion. (Pet. App. 6a-7a). Respondents' argument that there is not a "square conflict" between the D.C. Circuit opinion and the Michigan Supreme Court opinion is nothing more than a claim that Respondents' alternative argument would have avoided the conflict with the D.C. Circuit. (Opp. 10).

The Michigan Supreme Court opinion, however, does not adopt Respondents' view that a $10 per vehicle fee was being charged to carriers in Petitioner's situation in accordance with reciprocity agreements in force on November 15, 1991. The Michigan Supreme Court, rather, stated specifically that such fees were being "*waived* * * * under a reciprocity agreement" (emphasis added) but that such waivers were legally irrelevant. (Pet. App. 10a-11a). Respondents' arguments that Michigan's fees are based on effective reciprocity agreements so as to comply with the ICC and D.C. Circuit rulings fly in the face of specific statements to the contrary in the Michigan Supreme Court opinion.

Virtually nothing in Respondents' opposition argues that the Michigan Supreme Court opinion is sustainable under its own logic. The closest equivalent to an argument by Respondents in support of the Michigan Supreme Court opinion itself is their reference to the court's quotation of the statutory requirement at 49 U.S.C. §11504(c)(2)(B)(iv)(III) that the ICC shall establish a "fee system". (Pet. App. 9a). Respondents claim that this quote supports the court's

statement that the charging or non charging of a fee to a particular carrier was not relevant to determining compliance with the SSRS statute.[4] Respondents give no indication, however, of why the state's system of reciprocity arrangements in place on November 15, 1991 would not constitute part of the state's fee system, as noted in the dissenting opinion of Justice Kelly (Pet. App. 13a) and argued to this Court by Petitioner. (Pet. 22). Respondents otherwise offer nothing by way of statutory interpretation, textual analysis, legislative history, or logical argument to support the legal position advanced by the Michigan Supreme Court opinion itself.[5] Their surprising determination to devote virtually their entire opposition to theories not adopted by the Michigan Supreme Court speaks volumes concerning the Respondents' own view of the validity of that opinion.

Information presented in Respondents' opposition actually underscores the broad significance of the legal issue in conflict. Respondents point out that immediately following the issuance of the ICC decision setting rules for the SSRS in 1993, a number of states began attempting to modify or

[4] Respondents cite a decision of the Michigan Court of Claims in *Schneider National Carriers, Inc., et al v State of Michigan* in support of their position. (Opp. 14-15, 7b-18b). That opinion was reversed by the Michigan Court of Appeals in *Schneider National Carriers, Inc. v Michigan*, No. 208346 (Mich. Ct. App. May 14, 1999) (unpublished). Following application for leave to appeal to the Michigan Supreme Court, the *Schneider* case has been returned to the Michigan Court of Appeals for further proceedings based on the Michigan Supreme Court opinion which is the subject of this petition.

[5] Respondents are incorrect in describing the Michigan Supreme Court's holding as to the fee charged or collected as "a matter of state law". (Opp. 8). The Michigan Supreme Court opinion stated clearly that the issue before it was "the interpretation of a federal statute". (Pet. App. 8a) Such a statement is in accordance with the well settled doctrine that the meaning of words in a federal statute is a question of federal law. *Western Airlines, Inc. v Board of Equalization*, 480 U.S. 123, 129 (1987).

disregard their reciprocity agreements or raise fees beyond the levels they had charged based on their reciprocity agreements under the previous registration system. (Opp. 16). As Respondents also note, *amicus* ATA was forced to file a supplementary petition with the ICC for a more definitive ruling to emphasize that states could not manipulate the details of their reciprocity agreements to increase fees above the levels established by those agreements in effect on November 15, 1991. *American Trucking Associations—Petition for Declaratory Order—Single State Insurance Registration*, 9 ICC 2d 1184, 1194 (1993). Indeed, Respondents' opposition goes so far as to indicate the other states in which reciprocity agreement modifications were an initial or potential problem: Oklahoma, North Carolina, Indiana, Texas, Idaho, California, and Massachusetts. (Opp. 3, 20b-21b).

This information presented by Respondents themselves clearly disproves Respondents' assertion that the issue presented by the Michigan Supreme Court decision is "unique to Michigan". While Michigan's method of changing its reciprocity system to increase fees may be different from the methods of change previously attempted by other states, the underlying principle is the same.[6] Congress intended in all situations to freeze the fee systems created by reciprocity agreements at the levels in effect as of November 15, 1991.

Finally, there is no legal merit to Respondents' alternative argument which was neither adopted nor even discussed by the Michigan Supreme Court opinion. In essence, the alternative argument claims that "the fee * * * collected or

[6] Respondents' assertion that the overall impact of its reciprocity changes was "revenue neutral" is both legally irrelevant and unlikely. Michigan's change in reciprocity systems had the impact of ending exempt fee treatment for a major category of interstate vehicles: those commercially plated in such traditional base states as Illinois and Indiana by carriers headquartered in other states. The impact of such an adjustment on Petitioner and other carriers such as *amici* Schneider National, Inc., and ABF Freight System, Inc. has been substantial and continuing.

charged as of November 15, 1991" is the fee announced for the *following* year rather than the fee actually being collected or charged for operations for the year of the governing statutory date itself. This argument was specifically discussed and rejected by the ICC in *American Trucking Associations—Petition for Declaratory Order—Single State Insurance Registration*, *supra* at 9 ICC 2d 1192, 1195. ("We think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year and we so find.") The Michigan Court of Claims and the Michigan Court of Appeals both reached the same result,[7] finding the ICC's interpretation reasonable under the deference standards of *Chevron*.[8] As those courts held, the ICC's choice of the fee actually in force on November 15, 1991 as the "the fee * * * collected or charged" as of that date under SSRS represents a reasonable interpretation of the statute with which any reviewing court should not interfere.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN W. BRYANT *
R. IAN HUNTER
NEILL T. RIDDELL
DEAN & FULKERSON
801 W. Big Beaver Road
Fifth Floor
Troy, MI 48084-4767
(248) 362-1300

* Counsel of Record

Counsel for Petitioner

---

[7] Pet. App. 41a-42a, 26a-29a.

[8] *Chevron USA, Inc. v Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).